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In re Application of
DE PAUW et al.
Serial No.: 10/537,673
PCT App. No.: PCT/IB03/05606
Int'l Filing Date: 03 December 2003
Priority Date: 06 December 2002
Attorney Docket No.: NL02136US
For: DRIVE APPARATUS FOR FRAME
DEFLECTION AND METHOD

DECISION ON
PETITION UNDER
37 CFR 1.137(b)

This is a decision on applicant's "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)", filed on 09 August 2006 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 03 December 2003, applicant filed international application PCT/IB03/05606, claiming a priority date of 06 December 2002.

On 06 June 2005, within the thirty month period, applicant filed a transmittal letter (Form PTO-1390) requesting entry into the U.S. national stage.

On 05 October 2005 a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants indicating that the oath or declaration in compliance with 37 CFR 1.497(a) and (b) and the surcharge for filing the oath or declaration after the thirty month period were required.

On 13 July 2006, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed indicating that applicant had failed to respond to the Notification of Missing Requirements within the time period set therein.

On 09 August 2006, applicants responded to the Notification of Abandonment with the instant petition to revive along with one page of an executed declaration.

DISCUSSION

A petition under 37 CFR 1.137(b) must be accompanied by (1) a proper response unless it has been previously submitted, (2) the fee required by law for revival of an unintentionally abandoned application (1.17(m)), and (3) a statement that the "the entire delay in filing the required reply from the

due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional".

With respect to Items (2) and (3), applicant's statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" meets the requirements of 37 CFR 1.137(b)(3). The required petition fee of \$1500 has also been paid.

With regard to Item (1), a review of the application file reveals that the proper reply has not been provided. A proper reply includes an executed oath or declaration in compliance with 37 CFR §1.497(a) &(b). The declaration is not properly executed. The declaration submitted on 09 August 2006 appears to be incomplete. Page 1 of the 2 page declaration is missing. The declaration identifies the inventor and states the citizenship, residency and mailing address of the inventor. The requirements of 37 CFR 1.497(a) (1), (2) and (4) have not been met; the declaration does not appear to be executed in accord with either 37 CFR 1.66 or 1.68, it does not identify the specification to which it is directed, and it does not state that the person making the oath or declaration believes that named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought.

CONCLUSION

For the reasons stated above, the petition to revive under 37 CFR 1.137(b) filed 09 August 2006 in the above-captioned application is **DISMISSED without prejudice**.

The application remains abandoned. An oath or declaration in compliance with 37 CFR 1.497(a) and (b) is required.

The application will be held in PCT Legal Office to await applicant's further reply.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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